

Before the
RECEIVED **FEDERAL COMMUNICATIONS COMMISSION**
 Washington, D.C. 20554

JAN 11 1999

FEDERAL COMMUNICATIONS COMMISSION

OFFICE OF THE SECRETARY

Applications of

BRAVO CELLULAR

For Facilities in the Domestic Public
 Cellular Telecommunications Radio
 Service on Frequency Block A in
 Market 579 - North Carolina 15-Cabarrus

CENTAUR PARTNERSHIP

For Facilities in the Domestic Public
 Cellular Telecommunications Radio
 Service on Frequency Block A in
 Market 631 - South Carolina 7-Calhoun

EJM CELLULAR PARTNERS

For Facilities in the Domestic Public
 Cellular Telecommunications Radio
 Service on Frequency Block A
 in Market 721 - Wyoming 4-Niobrara

EJM CELLULAR PARTNERS

For Facilities in the Domestic Public
 Cellular Telecommunications Radio
 Service on Frequency Block A
 in Market 596 - Oklahoma 1-Cimarron

CC Docket No. 91-142

FILE NO. 10673-CL-P-579-A-89

FILE NO. 10720-CL-P-631-A-89

FILE NO. 10116-CL-P-721-A-89

FILE NO. 10567-CL-P-596-A-89

To: The Commission

OPPOSITION TO
PETITION FOR RECONSIDERATION

Data Cellular Systems, Cellular Pacific, North American Cellular, parties to the
 consolidated proceeding in CC Docket No. 91-142 (hereinafter "Licensees"), by their

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undersigned attorneys, submits this their Opposition to Petition for Reconsideration filed on behalf of Castle Trust, Orbit Cellular, RSA Cellular Partners, Schuylkill Mobile Fone, Inc., Scott Reardon, Skyline Cellular Partners, Sunrise Trust, Walker Trust, and Turnpike Cellular Partners ("Pending Petitioners") on December 28, 1998.

**Joint Petitioners Not Parties
to CC Docket No. 91-142**

On July 3, 1997, the Joint Petitioners claiming to have filed applications for initial authorizations in at least some of the markets involved in CC Docket 91-142, filed notices of appeal with the U.S. Court of Appeals for the D.C. Circuit seeking review of the Commission's June 1997 decision in Algreg Cellular Engineering, ^{1/} 12 FCC Red 1848 (1997). The Court of Appeals in response to Petitions to Dismiss by parties to the FCC proceeding and supported by the Commission dismissed those appeals for failure to comply with the requirement of §405(a) of the Communications Act. Turnpike Cellular Partners v. FCC, Consolidated Case Nos. 97-1421 and 97-1423 dismissed January 30, 1998, reh. denied March 30, 1998.

Not being content with the disposition by the Court of Appeals, Joint Petitioners on June 26, 1998 submitted to the Commission in this proceeding a pleading captioned "Statement for the Record" in which the Joint Petitioners notified the Commission that they have "elected to participate" in the instant proceedings. The Licensees were parties to a Joint Motion to Strike So-Called Statement for the Record filed on July 22, 1998 which pointed out the deficiencies in the Statement for the Record and asked that it be stricken. The Joint Motion demonstrated that the Joint Petitioners had failed to address the requirements of §309(e) of the Act and §1.223(c) of the Rules with respect to intervention. The Joint Petitioners are barred by §405(a) of the Act and §1.1106 of the Rules with respect to any late filed petitions for reconsideration. The Commission has not responded to the so-called statement for the record, and therefore the Joint Petitioners

^{1/} Assuming applications were filed for the markets licensed to the Licensees, those applications were dismissed in 1989.

are not parties to the CC Docket No. 91-142 proceeding. Any attempt to interject themselves into the proceeding is abusive. The filing of any pleadings is unauthorized. The Joint Petitioners do not have to take any action to preserve their position pending final disposition. See Turnpike Cellular Partners, supra.

Joint Petitioners'
Petition for Reconsideration is a Sham

The Commission's decision in Algreg Cellular Engineering, supra, disposed of all pending applications by concluding that there was no reason why they should not be granted and terminated the Show Cause proceeding as to the Licensees. The captioned applications were remanded to the Commission's Wireless Telecommunications Bureau for minor ministerial actions. The Wireless Telecommunications Bureau, consistent with the instructions from the Commission in Algreg Cellular Engineering, supra granted the captioned applications. The November Public Notice was in the nature of a clarification with respect to the grant dates.

The Commission's June 1997 decision has not been stayed. The parties have relied on that decision. The applicants, with applications granted, have moved forward with construction of facilities and service is being provided to the public. The Licensees have continued to expand and improve service in their respective RSA markets ensuring facilities based competition in the provision of cellular service. The commission has also granted its consent to assignments and transfers involving parties to the Algreg proceeding.

Strict Application of Frivolous Pleadings
and Anti-Green Mail Rules and Policies Required

The Commission's action in the Algreg proceeding, including the grants of the referenced applications, was based upon a fully developed factual and legal record. The action can hardly be characterized as premature. The claim that the Commission will be unable to fill its statutory duty unless the referenced grants are rescinded is totally

without support or merit. It can only be justified as an effort by the Joint Petitioners to gain some leverage for their green mail as others have tried to do in this case.

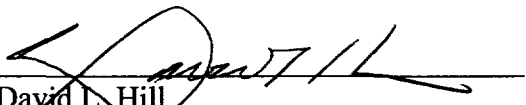
The Commission must act decisively and quickly to let it be known that this already protracted proceeding cannot and will not be used to extract green mail. Neither the Joint Petitioners nor anyone else will be permitted to pervert the Commission's process for private gain. As the Wireless Telecommunications Bureau emphasized in its recent Memorandum Opinion and Order In Re K.O. Communications, DA98-2C43, released December 31, 1998, at ¶31 that it "will not tolerate frivolous pleadings or pleadings filed for the purpose of extracting settlements from our licensees and applicants." Any concession to green mailers perverts the administrative process. It encourages protracted litigation and takes funds that should be available for applicants and licensees to use for service to the public to reward conduct clearly not in the public interest.

The Commission can discourage this perversion by moving promptly to affirm its June 1997 decision in this case; dismiss the various pleadings by the Joint Petitioners; and by vigorous application of its frivolous pleadings and anti-green mail rules and policies.

Respectfully submitted,

**DATA CELLULAR SYSTEMS
CELLULAR PACIFIC
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Dated: January 11, 1999
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CERTIFICATE OF SERVICE

I, Gladys L. Nichols, do hereby certify that on this 11th day of January, 1999, the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION** was served to the following persons by first-class mail, postage prepaid:

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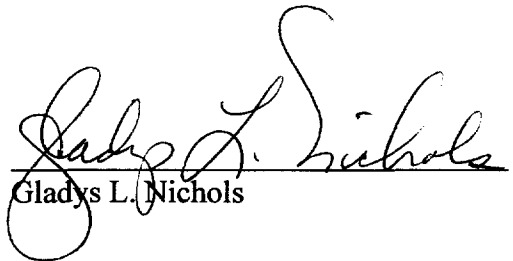
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